IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4504 OF 1997

1. Rayon Workers' Union
a recognised Union, having its
office at Shahad, Kalyan
Dist.: Thane

2. Shri Dinesh Pratap Singh
residing at B/4/48
Century Rayon Housing Soc.
Ulhas Nagar, Dist.: Thane ... Petitioners

V/s.

1. Century Rayon
having its factory at
at Murbad Road, Kalyan
Dist.:Thane
and its office at
Century Bhavan, Dr.A.B. Road
Worli, Bombay - 25

2. Smt.S.V. Suvarna,
4th Labour Court at Thane
havnig her office at
Wagle Industrial Estate
Thane ... Respondents

Miss N.D. Buch with Ms.B.B. Dholakia for Petitioners
Mr.P.K. Rele with Piyush Shah for Respondent No.1

CORAM: **SMT.NISHITA MHATRE, J.**

JUDGMENT RESERVED ON: **APRIL 1, 2005**
JUDGEMNT PRONOUNCED ON: **APRIL 19, 2005**

JUDGMENT:

. The Petition impugns the award parts I and II of the 4th Labour Court at Thane in Reference (IDA) No.11 of 1991. By award Part I, the Labour Court was of the view that the enquiry held against Petitioner No.2 (for

short, 'the workman') was fair and proper and that the findings drawn by the Enquiry Officer had not been seriously objected to. In these circumstances, it was held that the findings of the Enquiry Officer were not perverse. By award Part II, the Labour court allowed the reference partly by directing the respondent-company to pay 30 months wages to the workman on the basis of last drawn wages alongwith his other legal dues.

2. The facts arising from this petition are as follows:

There was an altercation in the factory premises of Respondent No.1 between one of the workers, Jagat Singh and an outsider. Several workers rushed to Jagat Singh's aid when they found him being assaulted. The workers, agitated by the fact that an outsider was interfering with their trade union activities, stopped the car of the President of the Company, pulled out the driver of the car and assaulted him. The Senior Vice-President (Finance and Administration), Mr.Kedia who on hearing of the assault on the President S.P. Mandelia, went to his rescue. Mr.Kedia was also assaulted leading to him being hospitalised for almost a month. As a result of this fracas, the 25 workers including the Petitioner-workman were chargesheeted on

9.4.1977. The following is an extract of the chargesheet issued to the workman:

> "It has been reported that on 4th April 1977 at about 10.30 a.m. at Century Rayon factory, you, while on duty, in collusion with other workers, indulge in following acts:
>
> a) Left the place of your work as per your duty, without the permission of the Supervisor;
>
> b) Formed unlawful assembly to commit mischief and other offences;
>
> c) Were shouting slogans inside the premises of the establishment;
>
> d) Indulged in abusive, disorderly and riotous behaviour on the premises of the establishment;
>
> e) Committed acts subversive of discipline and good behaviour on the premises of the establishment;
>
> f) Unauthorisedly possessed lethal weapons in the premises of the establishment;
>
> g) Stopped at the gate of the factory, Car No.MRD 8739 of Shri S.P. Mandelia, President; who was coming to the factory Office;
>
> h) Committed assault and caused grievous hurts and injury to the driver of the said Car No.MRD 8739 of Shri S.P. Maudelia,
>
> i) Committed assault, grievous hurts and injury to Shri R.P. Kedia, Senior Vice President (Finance and Administration) who, on hearing of assault on Shri S.P. Mandelia;
>
> j) Caused wilful damage to the property of the establishment by breaking the glass

in the office premises, damaging Car No.MRD 8739 and by breaking and disconnecting telephone instruments and line;

k) Threatened initimidated and used violence against and causing injury to other staff members and workmen.

The aforesaid acts on your part amount to acts of misconducts under the Standing Orders of the Establishment applicable to you under Clause 24(K), (1), (q), (r), (y), z(ii), z(vi) and Z(iii).

3. Not being satisfied with the replies to the chargesheets, the respondents held enquiries against the workmen. Out of the 25 workmen who were chargesheeted, the enquiry officer absolved 12 workmen of the charges levelled against them. Several witnesses were examined in the enquiry proceedings including the persons, who were assaulted on 4.4.1977. Each of the workmen who was chargesheeted examined himself besides several other witnesses. The remaining 12 workmen were held guilty of the misconduct alleged against them. Almost all of them were held guilty of the assault on the officers of the Company. However, it appears that on account of negotiations between the recognised union and the respondent-company, the company decided to dismiss only 3 workmen out of the 12, while retaining 9 workmen in service. These 3 workmen namely, Jagat Singh, Eswaran

and the Petitioner-workman herein were dismissed on 10.9.1980. The Respondent agreed to a joint Reference to adjudicate the demands raised on behalf of the three dismissed workmen. Accordingly, a Reference was made for adjudication before the Labour Court being Reference (IDA) No.11 of 1991. During the pendency of the Reference, Jagat Singh settled his dispute with the Respondent-company on a monetary basis. He was paid an amount of Rs.78,349/-. Eswaran died during the pendency of the Reference and the Respondent No.1 settled all his dues with his legal heirs. The workman is the lone employee who now stands dismissed on account of the incident of 4.4.1977.

4. After the pleadings were complete and the evidence was led by the parties before the Labour Court, the Labour Court by its award Part I dated 29.3.1996 held that the domestic enquiry against the workman was fair and proper.

5. The Labour Court then decided the award part II on 21.5.1997. The Labour Court was of the view that the misconduct had been proved against the workman. However, he was of the view that the punishment of dismissal was very harsh as the incident had arisen in an unexceptional manner. The Labour Court held that the

proper punishment would have been to grant compensation in lieu of reinstatement and, accordingly, awarded 30 months' wages to the workman on the basis of his last drawn wages alongwith his other legal dues.

6. It is not disputed that a settlement under section 2(p) r/w 18(1) of the Industrial Disputes Act was signed between the Petitioner-Union and the respondent-Company to jointly refer the dispute with respect to the three dismissed workmen for adjudication. It was also agreed between the parties that the three dismissed workmen would be paid sustainance allowance every month equivalent to 95% of the total wages w.e.f. 10.9.1980 for a period of three years. There is no dispute that such payment has been made.

7. The award part I, although challenged in this petition, has basically been accepted by the Petitioners. Therefore, the position now is that the enquiry is conceded to be fair and proper. The findings of the Enquiry Officer have not been found to be perverse. The workman Dinesh Singh had committed a misconduct. Award part II is challenged mainly on the ground that the respondent-company has meted out a discriminatory treatment to Dinesh Singh as he has been

singled out for being dismissed for the incident of 4.4.1977.

8. Ms.Buch, appearing for the Petitioners, submits that although 12 workmen were found guilty of the misconduct alleged against them, only three had been dismissed from service. According to the learned Counsel, the misconduct against all the 12 workmen which was proved was almost identical and, therefore, there was no reason for the respondent bank to discriminate against the workman. She further submits that there is no plausible reason why the respondent company has taken a lenient view in respect of the 9 workmen whereas the 3 workmen who were dismissed have been treated with a different yardstick. According to her, the Labour Court has not addressed itself to the issue of discrimination and, therefore, the award is required to be set aside. Furthermore, she submits that even qua the three dismissed workmen, Dinesh Singh has been singled out for unfair treatment. While the cases of Jagat Singh and Eswaran have been settled on a monetary basis, Dinesh Singh has been left out of employment for no cogent reason. According to her, when almost identical chargesheets were issued to 12 workmen who have been found guilty of almost identical charges by the enquiry officer, the Labour Court ought to have exercised its

powers under section 11A and directed the reinstatement in service. She submits that there is no cogent evidence on record as to why the respondent-company treated Dinesh Singh differently from other workmen and therefore, on this ground alone, the award is required to be set aside. The learned Advocate places reliance on the judgment of the Apex Court in *Sengara Singh and others v/s. State of Punjab & others,* **1984 I LLJ 114** and the judgment of a Division Bench of this Court in the case of *Oriental Containers Ltd. Bombay v/s. Engineering Workers Association & Others,* **1996 I CLR 934** in support of her submissions. An additional factor which the learned Advocate mentions is that the criminal case against the concerned workmen has ended in acquittal. She urges that although this need not necessarily mean that Petitioner No.2 would be absolved of the misconduct committed, it should be a factor which must be taken into consideration while deciding whether the punishment was justified.

9. Per contra, Mr.Rele, appearing for the Respondent-Company, submits that the respondent-company has acted extremely fairly and without any malafides while dismissing only three workmen out of the 25 chargesheeted. He submits that it was after the discussions held with the office bearers of the

Petitioner-Union that the respondent-company had considered the views of the union and had decided not to take the action of dismissal against 9 workmen. Only 3 workmen were dismissed by the company since it was of the view that they were the ring leaders and such action against them was warranted in order to maintain industrial peace. He submits that the conduct of the company cannot be labelled as arbitrary or motivated and the very fact that the company had taken into consideration the views of the office-bearers of the union while retaining 9 chargesheeted workmen in service indicated that the company had not acted capriciously and in an arbitrary fashion. According to the learned Counsel, discrimination cannot be inferred only from the fact that 9 workmen had been retained in service while three have been dismissed although all of them had committed similar acts of misconduct. Mr.Rele relies on the judgments in *Employers Management, Colliery , M/s.Bharat Coking Coal Ltd. v/s. Bihar Colliery Kamgar Union through Workmen,* **2005 (104) FLR 1224;** *M/s.Zuari Agro Chemicals Ltd. v/s. Rosario Fernades & Others,* **1986 LAB.I.C. 300** and *Yeshwant Gangaram Pandav v/s. Asea Brown Bowery Ltd.*, **1999 (111) LLJ Supp. 1333.**

10. It would be appropriate at this stage to consider the judgments cited at the bar. In the case of

Sengara Singh and others (supra), the Apex Court considered the disciplinary action initiated by the State of Punjab and the dismissal of about 1100 members of the police force for participating in a police agitation. Out of the 1100 agitators, only 100 police constables were dismissed from service whereas the others were reinstated after reviewing their cases. The Punjab High Court had dismissed the writ petitions filed by the aggrieved police constables. The Apex Court while considering the appeal preferred by the aggrieved constables, held that the 1100 dismissed members of the police force were guilty of the same misconduct, that is indiscipline, to the same extent and degree as the appellants before them. The Apex Court was of the view that there were no distinguishing features on which basis the 100 police constables had been kept out service and therefore, it found that the treatment meted out to the appellants suffered from the vice of arbitrariness which is forbidden by Article 14 of the Constitution of India. The action of the State of Punjab was therefore, set aside. The Division Bench of this Court in the case of *Oriental Containers Ltd. (supra)* was considered with the dismissal from service of 37 workmen. They were categorised into 4 groups by the Labour Court. While the workmen in three groups were reinstated with either full back wages or a

percentage thereof, no relief was given to the workmen in the 4th group. This Court found that there was no distinguishing feature between the case of the workmen in respect of whom the charges were dropped and were reinstated in service and the workmen mentioned in the 4th group. The Division Bench was of the view that these workmen deserved to be reinstated in service. It was observed that the identical charges against the workmen were proved through a workman who was similarly charged but who had been reinstated after tendering an apology. The Division Bench observed that the very fact that the company relied only on this evidence showed the shallowness of the accusations levelled by the management against the other workmen. Accordingly it was held that none of the workman could be found guilty of the misconduct alleged against them and hence all the workmen were reinstated. The Court held that there was no distinguishing feature between the cases of the workmen in respect of whom the charges were dropped and those who were reinstated in service and the workmen mentioned in the 4th group. Following the judgment in the case of *Gujarat Steel Tubes Ltd. v/s. Its Mazdoor Sabha,* **AIR 1980 SC 1896** by exercising the discretion available under section 11A, this Court directed reinstatement in service.

11. Both these judgments, in my view, indicate that if there is no distinguishing feature between the cases of the two sets of workmen, one set which is reinstated and the other which is kept out of the services, it would amount to discrimination. In the case of *Sengara Singh & Others* (supra), the Apex Court was of the view that the Government had not been able to establish that the 100 police constables who were dismissed were required to be treated differently. In Oriental Containers Ltd. (supra), the Division Bench found that the evidence which the company relied on was mainly that of an accomplice who had been reinstated after tendering apology. Therefore it was held that the charge itself was not proved against the workmen.

12. In the case of *Yeshwant Gangaram Pandav* (supra), a learned Single Judge of this Court was considering a petition filed by three workmen who were dismissed after an ex-parte enquiry. It was found that the enquiry was fair and proper. This Court negated the submission made on behalf of the workmen that there was discrimination with regard to the punishment meted out to them inasmuch as some of the other workmen who were equally guilty of the same misconduct were reinstated while the Petitioner before the Court remained out of service. The Court observed thus:

> 15. ...Though it is true that 14 workmen were chargesheeted for identical misconducts, it was only because of the settlement dated August 21, 1982 signed between the 1st Respondent company and the President of the Association of Engineering Works, (the Union of which the 3 Writ Petitioners were members at the material time) that the 10 workmen including J.S. Suryavanshi and R.N. Bhavsar were reinstated. Under this settlement it was agreed that the case of Y.G. Pandav, N.G. Bagul, A.D. Patil and R.M. Sonavane would be referred for adjudication of the Industrial Tribunal/Labour court under Section 10(2) of the Act and that until such adjudication they would be paid 175% of the last drawn wages. The discrimination, if any, is the result of the said settlement. Mr.Gonsalves did not dispute that the petitioners through their Union were parties to this collective agreement between the workmen and the employer. If this be so, it hardly lies in the mouth of the Petitioner-workmen now to complain that a situation, consented to and brought about by them consciously under the settlement, amounts to discrimination. The argument has no substance and needs to be rejected.

13. In *M/s.Zuari Agro Chemicals Ltd.* (supra), a learned Single Judge of this Court was deciding a writ petition arising out of an order passed on an approval application. The learned Single Judge considered whether discrimination and victimisation would mean one and the same thing. Accepting the submissions made on behalf of the employer, this Court observed thus:

> 18. It has been rightly pointed out by Mr.Gaitonde that once a misconduct is proved and that it held to be of a serious nature and for that the workman be punished with dismissal, he

> cannot be heard to complain of victimisation/discrimination by comparing the punishments awarded to some other fellow workmen. In the first instance, it must be seen that victimisation and discrimination are again two different facets. There can be a victimisation without any discrimination and there can be a discrimination without victimisation. As held by the supreme Court, victimisation is subjecting a workman to persecution and the employer seeks to make him guilty when he is innocent and that way he is a victim, whereas discrimination is a process that you pick up out of many similarly placed or situated and treat the picked ones differently than the remaining ones. It may be that both these elements are two species of unfair labour practice which is genus.

This Court observed that once the Tribunal has found that a workman has committed a gross misconduct which warranted the punishment of dismissal, a charge of discrimination against the employer would not lie as independently the Tribunal had found that the charge had been established against the concerned workman.

14. A conspectus of these judgments reveals that it is only when workers who are identically charged and found guilty, are treated differently without any consensus or consent from the Union, or unilaterally by the employer, that the management could be considered to be guilty of the charge of discrimination. However, when there is a settlement or an agreement or an understanding which could be either in accordance with

the provisions of the Industrial Disputes Act or merely an oral understanding to retain some employees who were charged while dismissing others who were similarly charged it cannot be said that the employer would be guilty of the charge of discrimination. It may be true that a trade union is often faced with a conundrum as to whether to agree to relief being granted to a large body of workmen on condition that some workmen would be dismissed. A consideration of various factors, including that at least some workers would benefit by such understanding and be retained in service may compel a trade union to accept the terms and conditions put forth by the management. These compelling circumstances may require the trade union in its wisdom and in the given situation to concede to certain objections raised by the employer for the greater good of the other employees. Under these circumstances, if the trade union agrees to certain conditions, however distasteful they may be, for the greater good of the several thousands of workers in service, it could not be said that the action of the management in keeping out such workmen after considering the views of the union would amount to discrimination. In the present case, there is ample evidence on record, including a letter which is placed before me dated 10.9.1980 written by the respondent-company to the President of the

Petitioner-Union to indicate that it was after the respondent-company had considered the views of the Petitioner-Union that it decided to dismiss only three workmen. The Union obviously would have wanted reinstatement of all the employees. However, on a consideration of the situation and after discussions, the management had taken a decision to dismiss only three workmen while issuing warning letters to the other 9 workmen who had been found guilty of the misconduct alleged against them. In these circumstances, it cannot be said that the respondent-company had acted discriminately, capriciously or arbitrarily while retaining the 9 workmen in service and dismissing the 3 workmen.

15. According to the learned Counsel appearing for the Company, the Labour Court was not justified in granting compensation in lieu of reinstatement when it was found that Dinesh Singh had committed several acts of misconduct including assault on the officers of the company. However, the company has not challenged the award and has instead, in order to put an end to the litigation, paid the amount as directed by the Labour Court.

16. The Enquiry Officer and the Labour Court have

found that the Petitioner workman was guilty of having assaulted the officers of the company which led to the Vice-President of the Company being hospitalised for over a month, he has been found guilty of other charges such as riotous behaviour on the premises of the establishment, forming unlawful assembly, shouting slogans in the premises, commission of acts subversive of discipline and causing willful damage to the property of the establishment including the car used by the President of the company and the telephone instruments. In my view, these are acts of serious misconduct. The role played by the Petitioner No.2 workman has been considered by the Enquiry Officer and the Labour Court. The Labour Court has directed payment of 30 months wages on the basis of the last drawn salary. However, the respondent-company having settled the dispute with the other two workmen by paying them some amounts could have settled the issue with Dinesh Singh as well. Jagat Singh has been paid an amount of Rs.78,349/-. In my view, if a similar amount is paid to Dinesh Singh, it would meet the ends of justice. The Respondent No.1 Company has already complied with the order of the Labour Court. The balance amount shall be paid within a period of four weeks from today.

17. Petition is disposed of accordingly. No order

as to costs.